

**STATE OF TENNESSEE
DIVISION OF MENTAL RETARDATION SERVICES
HIPAA POLICY - Privacy**

POLICY TITLE: Uses and Disclosures of Individual Information

Policy Number: DMRS HIPAA 104

Effective Date: January 1, 2004

Deputy Commissioner:

I. PURPOSE

The purpose of this policy is to provide guidelines for all employees of the Division of Mental Retardation Services (DMRS) regarding appropriate uses and disclosures of protected health information.

II. SCOPE

This policy shall apply to all staff of the Division of Mental Retardation Services regarding protected health information created or received at DMRS, including medical records, shadow records, billing records, health plan records, and electronic records. It will also apply to indexes, logs, ledgers, and reports containing protected health information.

III. AUTHORITY

Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, Final Rule, 45 CFR Parts 160 and 164: Title 33 of the *Tennessee Code Annotated*.

IV. POLICY

This policy simply states that PHI cannot be used or disclosed without the client's prior authorization or under allowable circumstances that do not require prior authorization (treatment, payment, operations, or by law). This policy would provide guidance for when client authorization is or is not required.

Definitions:

Business Associate: A person who is not a member of the workforce and who performs or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information.

De-identified Health Information: Health information that is not individually identifiable

Designated Record Set: Medical records, financial records, health plan and other information used to make decisions about citizens

Direct Treatment Relationship: A treatment between an individual and a health care provider that is not an indirect treatment relationship

Disclosure: The release, transfer, provision of access to, or divulging of information in any manner to any entity outside DMRS

Health Care Operations: Activities related to quality assessment and improvement, the competence or qualifications of health care professionals, health insurance benefits, medical review, legal services, auditing functions, business planning and development, business management and general administrative services

Health Information: Information whether oral or recorded in any form or medium that is created or received and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or past, present, or future payment for the provision of health care to an individual

Indirect Treatment Relationship: A relationship between an individual and a health care provider in which health care is provided based on the orders of and in behalf of another health care provider

Individually Identifiable Health Information: Health information that identifies an individual or that can be used to identify an individual

Limited Data Set: Protected health information that excludes specified direct identifiers of an individual, relatives, employers, or household members of the individual

Minimum Necessary Standard: Protected health information must be limited to that which is necessary to accomplish the intended purpose of the use, disclosure, or request; also refers to the responsibility of the covered entity to limit access of its workforce to protected health information

Payment: Activities undertaken in order to obtain reimbursement, including determinations of eligibility or coverage, billing and claims management, medical necessity, utilization review, and collections

Personal Representative: A person who may be next of kin, legal representative, Executor of the person's estate or will, or an Administrator of the person's estate or will

Protected Health Information (PHI) means individually identifiable information relating to past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual.

Shadow Record: A record maintained by an individual or department that is a duplication of original documents maintained elsewhere

Treatment: The provision, coordination, or management of health care and related services including consultations and referrals

Use: The sharing, employment, application, utilization, examination, or analysis of individually identifiable health information

Workforce Members means employees, volunteers, trainees, contractors, and other persons whose conduct, in the performance of work for the department, its offices, or programs onsite under the direct control of the department, office, or program regardless of whether they are paid by the Division of Mental Retardation Services.

Policy Overview:

- A. Protected health information may be used by DMRS or disclosed to a third party having a direct or indirect treatment relationship with a service recipient without consent or authorization for the purposes of treatment, payment or health care operations. Incidental uses and disclosures otherwise allowed under HIPAA, and uses and disclosures pursuant to an authorization are also permitted.
- B. If State of Tennessee law provides greater privacy protection of individually identifiable information of a service recipient it will preempt the Final Rule.
- C. DMRS is required to disclose protected health information to service recipients and to the Secretary of Health and Human Services.
- D. DMRS will make reasonable efforts to limit the disclosure of protected health information to the minimum necessary to accomplish the intended use, disclosure, or request. This requirement does not apply under the following circumstances:
 - 1. Disclosures made for treatment
 - 2. Uses or disclosures made to the service recipient or legal representative
 - 3. Uses or disclosures made pursuant to an authorization
 - 4. Disclosures made to the Secretary of Health and Human Services
 - 5. Uses or disclosures required by law
 - 6. Other uses or disclosures required by HIPAA
- E. DMRS may use de-identified health information at its discretion.
- F. DMRS may disclose protected health information to business associates and may allow a business associate to create or receive protected health information on its behalf after obtaining assurances that the business associate will appropriately safeguard the information and notify DMRS of any known violations.
- G. Written contracts or other written agreements with business associates will be maintained.
- H. Legal personal representatives, (e.g., conservator, court appointed guardian or administrator or someone exercising authority under a durable power of authority), of service recipients, including adults, emancipated minors, unemancipated minors, and deceased individuals, will be treated as the service representatives themselves in regard to protected health information, except when abuse, neglect, or potential harm to the person is suspected.
- I. All communications regarding protected health information will remain confidential and will be consistent with the Notice of Privacy Practices.
- J. Disclosures by whistleblowers and crime victims within the DMRS workforce or by business associates to health oversight agencies, public health authorities, or attorneys will not constitute a violation of HIPAA.
- K. Any person having authority under applicable law to act on behalf of an

individual who is an adult, or the parent or guardian of an unemancipated minor will be treated as a personal representative with respect to protected health information.

V. IMPLEMENTATION

- A. All disclosures of protected health information allowed under this policy will be processed as described in the DMRS Release of Information policy.
- B. Each DMRS agency will be responsible for accounting for all disclosures of protected health information for a period of six years. A log will be maintained in a designated area of each agency which accounts for all protected health information disclosed except for the following:
 - 1. Disclosures for treatment, payment, or health care operations
 - 2. Disclosures made to the service recipient or personal representative regarding his own health information
 - 3. Incidental disclosures
 - 4. Disclosures pursuant to an authorization
 - 5. Disclosures to those involved in the service recipient's care and for notification purposes
 - 6. Disclosures made for national security or intelligence purposes
 - 7. Disclosures made to correctional institutions or law enforcement officials
 - 8. Limited data sets
 - 9. Disclosures made prior April 14, 2003